MONTANA
Management View

An electronic newsletter for the state government manager from the Labor Relations Bureau

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Legislature passes pay bill

The 57th Legislature handily endorsed House Bill 13 April 18 with an accompanying appropriation very close to that originally proposed. The bill, currently awaiting Governor Martz's signature, provides for four percent pay increases for state employees on the classified pay plan each year of the biennium provided their salaries do not exceed the maximum for their pay grade. These raises will be implemented on employees' anniversary dates, similar to previous years. The entry and market rates of the 25-grade pay matrix will be increased by 3.4 percent. Employees paid on the blue collar plan will receive a $.56 per hour raise beginning October 1 each year.

Highlights

House Bill 13 also provides increases in the employer's share of the health insurance premium of $30 per month beginning January, 2002, and $41 per month beginning January, 2003. Still, with very early projections, a state worker's out-of-pocket expenses for dependent coverage could rise as high as $55 per month each benefit year. The State Employees Group Benefit Advisory Committee (SEGBAC) will continue to monitor projections and recommend plan changes to mitigate projected premium increases.

House Bill 13's final general fund appropriation is $28.8 million. This amount was reduced from $30.1 million after vacancy savings (salary and benefits) were recalculated in light of the additional vacancy savings required by House Bill 2. House Bill 13 also includes an appropriation of $1.3 million for the personnel services contingency fund, a fund managed by the Office of Budget and Program Planning (OBPP). OBPP distributes

these funds to agencies when personnel vacancies do not occur, when retirement costs exceed agencies' resources, or when other contingencies arise.

Alternative pay plans

Legislature OK's alternative pay plans

State agencies can keep pursuing alternative classification and pay to reward successful performance and be competitive in the job market, the 57th Legislature decided earlier this month.

Lawmakers reaffirmed the existing statutory commitment to an alternative pay plan "based on demonstrated competencies and accomplishments, on the labor market, and on other situations" linked to working conditions, productivity or certain agency business strategies.

Major public employee unions supported House Bill 13, the pay initiative backed by Governor Martz and former Governor Racicot, which won overwhelming approval in both houses of the Legislature.

The legislation basically renews the current authority for agencies to pursue an alternative classification and pay plan, but also contains a couple noteworthy revisions –

It deletes "demonstration project" references. The previous language referenced the development of "demonstration *projects*" in alternative classification and pay. The new language simply provides for the development of "an alternative classification *plan*" for state agencies. The change reflects how the alternative classification and pay system has progressed beyond a demonstration phase.

It deletes "minimum raise" for alternative pay plans. The law provided in Fiscal Years 2000 and 2001 that no employee in an alternative pay plan would receive a pay raise less than the statewide legislated raises (three percent each year). The new language provides agencies in alternative pay plan some discretion in distributing pay raise money by the Legislature.

Management in a collective bargaining work place, for example, could propose to distribute the money for pay raises in a manner different than the four percent across-the-board raise contained in the classified pay plan for Fiscal Years 2002 and 2003. The state's collective bargaining law requires an employer to bargain the subject with the union rather than unilaterally implement such a proposal.

Your representative in the Labor Relations Bureau can help with any questions or ideas related to these issues.

Reports from some early demonstration projects -

The Montana Chemical Dependency Center - Participants in one of the first demonstration projects, at the Montana Chemical Dependency Center in Butte, recently reported the results of their efforts. The effort involved 10 full-time *treatment specialists*.

Labor and management worked together to identify key employee competencies and blend them into the performance evaluation system. AFSCME was the bargaining agent for employees. Supervisors and employees spent more than a year in a trial performance appraisal period, which concluded with the awarding of variable bonuses linked to performance.

Employees and supervisors reported they value the use of competencies for performance appraisal, but it was a difficult task to distribute the bonus pay. Employees reported the bonus pay experience caused negative feelings and unnecessary competition among treatment specialists. While employees believed the negative aspects of the experience could be mitigated over time and with the inevitable cultural changes, they did not want to repeat the experience. They chose to discontinue the bonus pay system, but retain the valuable use of competencies in the performance evaluation.

Montana Department of Revenue **–** The Department of Revenue worked two years on developing employee competencies and pay plan priorities. The department bargained and implemented a number of pay components with the employees' bargaining agent, a coalition of MEA-MFT and MPEA. The project is department-wide, affecting about 600 employees.

The pay components included competency-based bonuses linked to performance appraisal and a strategic pay adjustment for employees who assume team-lead duties in the agency's team environment. Several pay components were widely valued, however, labor and management have not reached agreement on enough pay components to fully implement the entire alternative pay plan this calendar year.

Department leadership has proposed to the union that the department operate under the regular statewide classification and pay plan until an agreement can be reached on an alternative pay plan. In the meantime, a significant amount of work has been accomplished related to the implementation of the competency project. That work will continue to be a vital part of the department's business operation, including the development of employee roles, career ladders, and an improved performance appraisal process. ⫽

Time to review agreements -

Contract negotiations begin for 2001-03 term

All 62 of the bargaining agreements for units under the executive branch (non-university system) expire June 30, 2001. Staff from the Labor Relations Bureau, agency personnel officers, and managers are responsible for representing state government in negotiations for successor agreements.

State negotiations are unique in that significant pay and benefit matters are bargained prior to the legislative session while other bargaining issues - like seniority, scheduling, clothing allowances and recruitment and selection procedures - are bargained immediately prior to the agreement's expiration. It's rare that state's contract negotiations end in impasse or concerted activity. This article assumes bargaining takes this typical trek.

Here's how the process generally works:

Both parties poll their constituencies for contract changes. The employees' bargaining agent will meet with workers to formulate contract proposals and elect a bargaining team. Around the same time, the personnel officer and a representative from the Labor Relations Bureau will solicit bargaining interests from managers and first-line supervisors.

Sometimes neither party is interested in pursuing contract changes. Under those circumstances, employees are asked to ratify a "rolled-over" contract.

The parties meet, exchange and bargain contract proposals. The bargaining process varies significantly from unit to unit. Many advocates prefer interest-based approaches where the parties come to the table with broad interest statements and mutually explore possible solutions. This process gained favor in recent years, particularly in the public sector. The traditional bargaining approach differs in that it is position-based. The party proposing the change has usually determined the solution, and comes to the table with contract language in hand. Both styles are used in state government.

The parties reach tentative agreement. The parties reach tentative agreement when all issues or positions have been resolved or dropped. The bargaining agent then takes the settlement to unit members for ratification, usually accomplished through a vote of the membership.

Bargaining unit members ratify the contract. Bargaining agents are required by state law to notify the chief of the labor relations bureau once their members have ratified their contracts. Bargaining unit employees do not receive their statutory pay raises until that notification is received. Retroactivity is negotiable if negotiations conclude after the statutory pay raises are scheduled to go into effect.

Labor Relations Bureau staff prepare the new agreements and make them available electronically on the bureau's website. All of the state's collective bargaining agreements, along with the name of the Labor Relations Bureau staff member assigned to the unit, can be found at:

www.discoveringmontana.com/doa/spd/index.htm

Many employment policy changes can trigger an obligation to bargain

Managers and personnel officers working with employees represented by a union are wise to know their obligations under Montana law with respect to collective bargaining. Where employees have chosen to be represented by a union, the employer is required to address issues relative to wages, hours and working conditions with the employees' exclusive bargaining agent. This is known as the ***duty to bargain*** -- both parties must approach negotiations as willing advocates, prepared to actively address issues and reach agreement where possible without intent to hinder the other. MCA 39-31-305 identifies the duty to bargain collectively and in good faith as the role of the representatives of both the union and the employer. Each is compelled through mutual obligation to meet at reasonable times and negotiate with one another regarding wages, hours, fringe benefits and other conditions of employment or negotiation of an agreement and the execution of a written contract incorporating any agreement reached.

Wages, hours and working conditions are known as ***mandatory subjects of bargaining***. In simple terms, any policy, change in practice, or modification in these areas are considered negotiable:

Wages **(any impact on the employee's ability to earn money):**

- Performance or competency pay, market adjustments, pay exceptions, and performance appraisals tied to pay.

Hours **(Employers have the right to schedule employees, but hours of work are subject to bargaining.)**

Working Conditions:

- Work-rules, training, uniforms, workload, and other benefits associated with employment.

Quick & Dirty Guide to DUTY TO BARGAIN:

- ***Agree to meet on all issues relative to wages, hours, and working conditions.***
- ***Entertain proposals, solutions, and new ideas.***
- ***Agree to meet at reasonable times and at reasonable places.***
- ***Provide feedback to the union representative through your representative.***

The duty to bargain does not compel either party to make concessions or agree to the other's proposal. Further, the inability or failure to reach a negotiated agreement is not evidence of a failure to bargain or bargain in good faith as long as the parties bargain fairly and with a desire to reach agreement.

Failure by either labor or management to comply with the requirement to negotiate in good faith with respect to wages, hours, fringe benefits, terms and conditions of employment could result in an unfair labor practice complaint alleging a "failure to bargain."

In conclusion, managers, personnel officers and supervisors need to recognize their "duty to bargain" with their employees' exclusive representative regarding "mandatory subjects." This duty is ongoing. It requires a good-faith effort on all parties involved to attempt to reach agreement on such items as wages, hours, working conditions, fringe benefits and other terms and conditions of employment.

For more information, contact the Labor Relations Bureau at 444-3871.

Arbitration roundup

The state prevailed in some recent arbitration cases over contract interpretation. Two cases dealt with management's approval and denial of annual leave. One case dealt with call-out pay and a question of past practice. *Each case involves bargaining histories, contract language and facts that could be unique to the agency involved. Contact your labor negotiator in the Labor Relations Bureau if you have questions about how similar circumstances might apply to language in your agency's collective bargaining agreement.*

"Conditional" approval of annual leave relating to compensatory time –

One case in the Department of Justice involved management's "conditional" approval of an annual leave request. The employee approached management on a Thursday during the first week of the pay period, asking to take the next day off (Friday) to go fishing. The manager stated on the leave-request form, "approved if the time taken does not cause additional comp time to be earned."

The bargaining agreement requires that "authorized holiday leave, sick leave, annual leave, or compensatory time off shall constitute time worked when computing overtime or compensatory time credits." The employee took Friday off to go fishing. The following week, within the same pay period, he decided on his own (without management authorization) to work some long days above and beyond the normal workday of eight hours. He submitted a time sheet for the two-week pay period showing 76 hours of actual work, plus eight hours of annual leave the day he went fishing, for a total of 84 hours.

Management directed the grievant to correct his time sheet to comply with the prior directive. When the grievant refused, management adjusted the time sheet, charging only four hours of annual leave to keep the total paid hours at 80. The union grieved, alleging management previously approved the vacation and had no right to alter the time sheet. Management argued the grievant was never approved "eight" hours of vacation, but rather, only as many hours as were necessary for him to take the day off and still keep his total hours to the 80 of the normal work period.

Arbitrator Donald Prayzich denied the grievance. "The broad management rights clause clearly reserves to management, among other things, the right to direct the work force," he wrote. "It is well established that discretion under such clauses must be reasonably exercised and absent any evidence of abuse of discretion. While the employer did adjust the time card to reflect 80 hours for the pay period, this action was taken only after the grievant refused to do so. Under all circumstances, no conclusion that management acted in an arbitrary, capricious, or unreasonable manner is warranted."

Best interests of the state in approving or denying annual leave –

Another case in the Department of Justice involved an employee's request to take vacation on the day of July 3 (2000, a Monday) for extended time off prior to the Independence Day holiday on Tuesday, July 4. The employee made the request in March. She was a customer service employee in a work unit of three. Management's practice had been to make sure that at least two of the three were scheduled to work at all times, unless illnesses or emergencies did not allow it.

The collective bargaining agreement requires that "the dates when employees' vacations shall be granted shall be determined by agreement between each employee and the Employer, with regards to seniority and the best interests of the state." The contract does not contain express language that some other contracts in state government contain, relating to the best interests of the employee or an "undue burden" standard upon the agency in denying annual leave. It so happened that of the three employees in the grievant's work unit, an employee with more seniority than the grievant also requested July 3 off. Management granted the day to the senior employee and denied the day off for the grievant. The union grieved, alleging that management was obligated to grant each employee the specific day off selected by the employee, and that management had failed to show that granting the grievant's requested day off would cause a burden on the business operation.

Management submitted evidence showing that granting the grievant the day off would have left a single employee in the work unit that day to take more than 150 phone calls from the public, serve a large number of "walk-in" customers, and process the day's correspondence for the entire work unit. Arbitrator Donald Prayzich denied the grievance. "The Arbitrator must conclude, by the weight of the evidence, that the Employer did not violate the Collective Bargaining Agreement when it determined that the request for July 3 as a vacation date by the Grievant had to be denied," he wrote. "A contrary ruling would have a negative impact upon the Agreement and would render the 'best interests of the State' language of this Article virtually meaningless."

Management's limited approval of enhanced call-out pay not a binding past practice –

A case in the Department of Transportation involved management unilaterally ceasing a limited practice of paying extra for employee call-outs. The collective bargaining agreement provides premium pay for employees who are called to work outside their normal workday. The bargaining unit is a statewide unit. The business operation is divided into many geographic sections with managers in each location. In a particular section, there was an unusual but longstanding practice whereby management was agreeable to paying for the call-out from the time the employee received the phone call at home, rather than from the time the employee arrived at the work site. In all other sections, the practice was to pay for the call-out starting from the time the employee arrived at the work site.

Management ceased the unusual practice in March 2000 and notified the union representative in advance. The union grieved, alleging that management had established a past practice of paying from the time the employee received the phone call at home, and that the practice was binding.

Arbitrator Jack Calhoun denied the grievance. "The evidence compels the conclusion that the practice of awarding call-out pay in emergencies from the time the employee received the telephone call to report for duty was limited to no more than two sections an possibly even once section," he wrote. "One section manager acting for one section of a few employees out of a much larger bargaining unit of employees in the Department cannot bind the Department or one of its divisions to a past practice on an issue that requires uniformity throughout the organization."

Questions, comments or suggestions? Contact the Labor Relations Bureau –

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Or visit our website:

www.discoveringmontana.com/doa/spd/index.htm